

## REMARKS

### **I. Introduction**

Claims 1-33 are currently pending in this application. The Examiner has rejected claims 1-33 under 35 U.S.C. § 102(a), as being anticipated by "Nicol et al. (Final Report 1978)." Applicants respectfully traverse these rejections, and request reconsideration and withdrawal thereof.

### **II. Claim Rejections – 35 U.S.C. § 102**

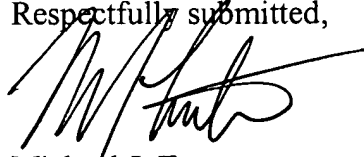
All pending claims 1-33 were rejected by the Examiner under 35 U.S.C. § 102(a) as being anticipated by the 3 April 1998 Millennium Shoulder Project Final Report ("Final Report"). The Final Report is not properly citable prior art to this application. As provided in more detail in the attached Declaration of Alexander C. Nicol and Nicola K. Fowler, the Final Report was a confidential design study report provided confidentially by Drs. Nicol and Fowler to appropriate persons at 3M Health Care Ltd. The Final Report was not and has not been published and was not any type of offer for sale. Moreover, the Final Report was maintained in confidence by Drs. Nicol and Fowler and the persons at 3M Health Care Ltd. with knowledge of the Final Report. Because the Final Report is not a publication, is not an offer for sale, and was not known to others outside of Drs. Nicol and Fowler and persons at 3M Health Care Ltd. (the predecessor to the assignee of this application) it does not qualify as prior art under 35 U.S.C. § 102. Thus, the Final Report is not properly citable prior art against this application and the Applicants respectfully request that the rejection of claims 1-33 be withdrawn as anticipated under 35 U.S.C. § 102 by the Final Report.

## CONCLUSION

For at least the above reasons, Applicants respectfully request allowance of claims 1-33 and issuance of a patent containing these claims in due course. If there remain any additional issues to be addressed, the Examiner is urged to contact the undersigned attorney.

Applicants believe that no fees are due, but if mistaken, the Commissioner is hereby authorized to charge any additional fees and credit any overpayment to Deposit Order Account No. 11-0855.

Respectfully submitted,



Michael J. Turton  
Reg. No. 40,852

OF COUNSEL:

KILPATRICK STOCKTON LLP  
1100 Peachtree Street  
Suite 2800  
Atlanta, Georgia, 30309-4530  
404.815.6061